

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 97-361-C - ORDER NO. 98-66

FEBRUARY 2, 1998

IN RE: Application of BellSouth BSE, Inc. for a) ORDER
Certificate of Public Convenience and) DENYING PETITIONS
Necessity for Authority to Provide Local) FOR REHEARING
Exchange Telecommunications Services in) AND/OR
the State of South Carolina.) RECONSIDERATION
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This matter comes before the Public Service Commission of South Carolina (the Commission) on three Petitions for Rehearing and/or Reconsideration of our Order No. 97-1063, filed by AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and the South Carolina Cable Television Association (SCCTA). All of the Petitions basically contest our awarding a Certificate of Public Convenience and Necessity to provide local telecommunications services to BellSouth BSE, Inc. (BSE or the Company). Because of the reasoning stated below, all three Petitions must be denied.

As stated in the Memorandum of BellSouth BSE, Inc. In Opposition to Intervenor's Petitions for Rehearing or Reconsideration, the Petitioners offer nothing new in their opposition to us granting BSE a certificate that has not already been addressed and rejected by our Order No. 97-1063. The purpose of a Petition for Rehearing is not

intended as a procedure for rearguing the whole case merely because the non-prevailing parties disagree with the original decision. It appears to us that the matters contained in the Petitions in this case are merely arguments already considered by us and rejected in our Order. However, we will address again the various points put forth by the Petitioners.

We must state at the beginning that the Petitioners, who were Intervenor in the original case, presented no evidence. The only evidence in the case was presented by BellSouth BSE witness Robert Scheye. We agree with the Petitioners that the burden of proof may not be shifted to them, and that the burden of proof must remain with BSE to show that it is entitled to a Certificate under the statutory criteria. However, we also note that, without actual evidence in opposition to the granting of the Certificate, it is difficult for us to side with the Petitioners on their various points, especially in light of what we consider to be the persuasive evidence presented by BSE in favor of the granting of its Certificate.

In their Petitions, all three Petitioners rehash their argument that BSE should not be granted a Certificate to provide services in geographic areas served by BST. Under the Petitioner-Intervenor theory, since BSE is an affiliate of BST, BSE may not compete with BST in its service territory as a CLEC, since BSE is actually an affiliate of the incumbent local exchange carrier (ILEC) BellSouth Telecommunications. The Petitions, however, ignore a portion of the wording of the statutory definition of an ILEC. S.C. Code Ann. Section 58-9-10(11) (Supp. 1997) provides in part that an ILEC is an entity

“which provides local exchange service pursuant to a certificate of public convenience and necessity issued by the commission before July 1, 1995.” As we noted in our prior Order, BSE was not even incorporated until July 17, 1997, thus making it impossible for BSE to fit into the definition of an ILEC. Therefore, BSE is, by statutory definition, a “new entrant LEC,” which is defined as a “telecommunications company holding a certificate of public convenience and necessity issued by the Commission pursuant to Section 58-9-280(B) after December 31, 1995, to provide local exchange services within a certificated geographic area of the State.” See S.C. Code Ann. Section 58-9-10(13)(Supp. 1997). Thus, the claim that BSE may not operate as a competitor in BST territory is unfounded in fact and in law.

Further, both AT&T and MCI again claim in essence that BSE failed to show that it has sufficient technical, financial, and managerial resources to provide the services requested. We addressed this issue extensively in Order No. 97-1063. We again note that BST furnished independent employees for BSE’s use. Clearly, these employees brought with them to BSE the necessary resources for BSE to provide the services requested. The Petitioners have failed to point to anything which prohibits a parent company from furnishing independent employees for use by one of its subsidiaries. Further, BSE witness Scheye noted that “BSE will comply with all applicable rules, policies, and statutes” applicable to the offering of local exchange services and that BSE fully intends to meet the Commission’s service standards. The record in this case is undisputed as to BSE’s possession of the necessary resources to perform the requested services.

Both AT&T and SCCTA state the belief that our Order fails to show alleged adverse effects on the public interest and complain that there are no safeguards to forestall anticompetitive activity. With regard to the first proposition there is simply no evidence in the record of such adverse effects on the public. Scheye noted that BSE will interface with BST just like any other CLEC. Scheye further noted that competition in the industry would force high quality at a lower cost. Further, the parties made no showing of the need for the establishment of safeguards from potential anticompetitive effects. The Commission will monitor the situation, however. Should such problems become apparent in the future to this Commission, we can establish whatever procedures are necessary at that time to safeguard the public. Nor have we changed our mind about BSE not adversely affecting local service.

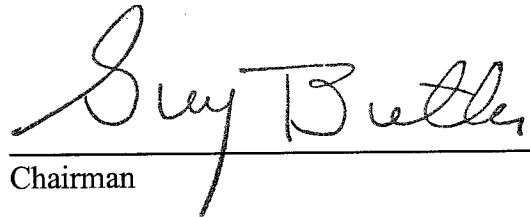
Finally, MCI suggests in its Petition that this Commission lacks jurisdiction because BSE did not include with its Application a piece of paper specifically labeled "price list." As we stated in Order No. 97-1063, MCI's argument ignores the fact that BSE's filing does contain a proposed tariff that meets all Commission requirements for a tariff and a price list. Also, BSE committed to this Commission that before it begins to provide service in South Carolina, it will file for Commission approval of a tariff and final price list which will include all regulated service offerings. As we further stated, having a meaningful separate price list prior to the establishment of an interconnection agreement with other carriers, or without fully constructing the facilities necessary to provide the service is an impossibility. Therefore, we reiterate that BSE did everything it

could to furnish an appropriate “price list” under the circumstances of the case, and that this ground is without merit.

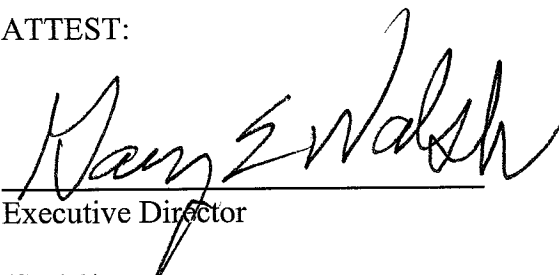
Any other grounds that may have been listed in the various Petitions for Rehearing and/or reconsideration are hereby denied as being without substance. We further hold that Order No. 97-1063 is fully based in law and logic, and that all Petitions for Rehearing and/or Consideration are hereby denied.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director
(SEAL)